

ASSEMBLY BILL

No. 1220

Introduced by Assembly Member Romero

February 26, 1999

An act to amend Section 23622.7 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1220, as introduced, Romero. Bank and corporation taxes: credit: wages.

The Bank and Corporation Tax Law authorizes various credits against the taxes imposed by that law, including a credit for wages paid to qualified employees employed in an enterprise zone.

This bill would require the taxpayer to provide the Franchise Tax Board with specified information regarding employees employed by the taxpayer within the state during the income year.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23622.7 of the Revenue and
- 2 Taxation Code is amended to read:
- 3 23622.7. (a) There shall be allowed a credit against
- 4 the "tax" (as defined by Section 23036) to a taxpayer who
- 5 employs a qualified employee in an enterprise zone

1 during the income year. The credit shall be equal to the
2 sum of each of the following:

3 (1) Fifty percent of qualified wages in the first year of
4 employment.

5 (2) Forty percent of qualified wages in the second year
6 of employment.

7 (3) Thirty percent of qualified wages in the third year
8 of employment.

9 (4) Twenty percent of qualified wages in the fourth
10 year of employment.

11 (5) Ten percent of qualified wages in the fifth year of
12 employment.

13 (b) For purposes of this section:

14 (1) "Qualified wages" means:

15 (A) (i) Except as provided in clause (ii), that portion
16 of wages paid or incurred by the taxpayer during the
17 income year to qualified employees that does not exceed
18 150 percent of the minimum wage.

19 (ii) For up to 1,350 qualified employees who are
20 employed by the taxpayer in the Long Beach Enterprise
21 Zone in aircraft manufacturing activities described in
22 Codes 3721 to 3728, inclusive, and Code 3812 of the
23 Standard Industrial Classification (SIC) Manual
24 published by the United States Office of Management
25 and Budget, 1987 edition, "qualified wages" means that
26 portion of hourly wages that does not exceed 202 percent
27 of the minimum wage.

28 (B) Wages received during the 60-month period
29 beginning with the first day the employee commences
30 employment with the taxpayer. Reemployment in
31 connection with any increase, including a regularly
32 occurring seasonal increase, in the trade or business
33 operations of the taxpayer does not constitute
34 commencement of employment for purposes of this
35 section.

36 (C) Qualified wages do not include any wages paid or
37 incurred by the taxpayer on or after the zone expiration
38 date. However, wages paid or incurred with respect to
39 qualified employees who are employed by the taxpayer
40 within the enterprise zone within the 60-month period

1 prior to the zone expiration date shall continue to qualify
2 for the credit under this section after the zone expiration
3 date, in accordance with all provisions of this section
4 applied as if the enterprise zone designation were still in
5 existence and binding.

6 (2) “Minimum wage” means the wage established by
7 the Industrial Welfare Commission as provided for in
8 Chapter 1 (commencing with Section 1171) of Part 4 of
9 Division 2 of the Labor Code.

10 (3) “Zone expiration date” means the date the
11 enterprise zone designation expires, is no longer binding,
12 or becomes inoperative.

13 (4) (A) “Qualified employee” means an individual
14 who meets all of the following requirements:

15 (i) At least 90 percent of whose services for the
16 taxpayer during the income year are directly related to
17 the conduct of the taxpayer’s trade or business located in
18 an enterprise zone.

19 (ii) Performs at least 50 percent of his or her services
20 for the taxpayer during the income year in an enterprise
21 zone.

22 (iii) Is hired by the taxpayer after the date of original
23 designation of the area in which services were performed
24 as an enterprise zone.

25 (iv) Is any of the following:

26 (I) Immediately preceding the qualified employee’s
27 commencement of employment with the taxpayer, was
28 a person eligible for services under the federal Job
29 Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or
30 its successor, who is receiving, or is eligible to receive,
31 subsidized employment, training, or services funded by
32 the federal Job Training Partnership Act, or its successor.

33 (II) Immediately preceding the qualified employee’s
34 commencement of employment with the taxpayer, was
35 a person eligible to be a voluntary or mandatory
36 registrant under the Greater Avenues for Independence
37 Act of 1985 (GAIN) provided for pursuant to Article 3.2
38 (commencing with Section 11320) of Chapter 2 of Part 3
39 of Division 9 of the Welfare and Institutions Code, or its
40 successor.

1 (III) Immediately preceding the qualified employee's
2 commencement of employment with the taxpayer, was
3 an economically disadvantaged individual 14 years of age
4 or older.

5 (IV) Immediately preceding the qualified employee's
6 commencement of employment with the taxpayer, was
7 a dislocated worker who meets any of the following:

8 (aa) Has been terminated or laid off or who has
9 received a notice of termination or layoff from
10 employment, is eligible for or has exhausted entitlement
11 to unemployment insurance benefits, and is unlikely to
12 return to his or her previous industry or occupation.

13 (bb) Has been terminated or has received a notice of
14 termination of employment as a result of any permanent
15 closure or any substantial layoff at a plant, facility, or
16 enterprise, including an individual who has not received
17 written notification but whose employer has made a
18 public announcement of the closure or layoff.

19 (cc) Is long-term unemployed and has limited
20 opportunities for employment or reemployment in the
21 same or a similar occupation in the area in which the
22 individual resides, including an individual 55 years of age
23 or older who may have substantial barriers to
24 employment by reason of age.

25 (dd) Was self-employed (including farmers and
26 ranchers) and is unemployed as a result of general
27 economic conditions in the community in which he or she
28 resides or because of natural disasters.

29 (ee) Was a civilian employee of the Department of
30 Defense employed at a military installation being closed
31 or realigned under the Defense Base Closure and
32 Realignment Act of 1990.

33 (ff) Was an active member of the armed forces or
34 National Guard as of September 30, 1990, and was either
35 involuntarily separated or separated pursuant to a special
36 benefits program.

37 (gg) Is a seasonal or migrant worker who experiences
38 chronic seasonal unemployment and underemployment
39 in the agriculture industry, aggravated by continual
40 advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) “Taxpayer” means a bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(6) “Seasonal employment” means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do ~~both~~ all of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(3) *Any taxpayer claiming a credit pursuant to this section shall provide, in a form and manner specified by the Franchise Tax Board, the average number of full-time (defined as 35 hours or more per week), part-time, and seasonal employees employed by the taxpayer within the state during the income year.*

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

1 (B) The credit, if any, allowable by this section to each
2 member shall be determined by reference to its
3 proportionate share of the expense of the qualified wages
4 giving rise to the credit, and shall be allocated in that
5 manner.

6 (C) For purposes of this subdivision, “controlled group
7 of corporations” means “controlled group of
8 corporations” as defined in Section 1563(a) of the
9 Internal Revenue Code, except that:

10 (i) “More than 50 percent” shall be substituted for “at
11 least 80 percent” each place it appears in Section
12 1563(a)(1) of the Internal Revenue Code.

13 (ii) The determination shall be made without regard
14 to subsections (a)(4) and (e)(3)(C) of Section 1563 of the
15 Internal Revenue Code.

16 (2) If an employer acquires the major portion of a
17 trade or business of another employer (hereinafter in this
18 paragraph referred to as the “predecessor”) or the major
19 portion of a separate unit of a trade or business of a
20 predecessor, then, for purposes of applying this section
21 (other than subdivision (e)) for any calendar year ending
22 after that acquisition, the employment relationship
23 between a qualified employee and an employer shall not
24 be treated as terminated if the employee continues to be
25 employed in that trade or business.

26 (e) (1) (A) If the employment, other than seasonal
27 employment, of any qualified employee with respect to
28 whom qualified wages are taken into account under
29 subdivision (a) is terminated by the taxpayer at any time
30 during the first 270 days of that employment, whether or
31 not consecutive, or before the close of the 270th calendar
32 day after the day in which that employee completes 90
33 days of employment with the taxpayer, the tax imposed
34 by this part for the income year in which that
35 employment is terminated shall be increased by an
36 amount equal to the credit allowed under subdivision (a)
37 for that income year and all prior income years
38 attributable to qualified wages paid or incurred with
39 respect to that employee.

1 (B) If the seasonal employment of any qualified
2 employee, with respect to whom qualified wages are
3 taken into account under subdivision (a) is not continued
4 by the taxpayer for a period of 270 days of employment
5 during the 60-month period beginning with the day the
6 qualified employee commences seasonal employment
7 with the taxpayer, the tax imposed by this part, for the
8 income year that includes the 60th month following the
9 month in which the qualified employee commences
10 seasonal employment with the taxpayer, shall be
11 increased by an amount equal to the credit allowed under
12 subdivision (a) for that income year and all prior income
13 years attributable to qualified wages paid or incurred
14 with respect to that qualified employee.

15 (2) (A) Subparagraph (A) of paragraph (1) shall not
16 apply to any of the following:

17 (i) A termination of employment of a qualified
18 employee who voluntarily leaves the employment of the
19 taxpayer.

20 (ii) A termination of employment of a qualified
21 employee who, before the close of the period referred to
22 in subparagraph (A) of paragraph (1), becomes disabled
23 and unable to perform the services of that employment,
24 unless that disability is removed before the close of that
25 period and the taxpayer fails to offer reemployment to
26 that employee.

27 (iii) A termination of employment of a qualified
28 employee, if it is determined that the termination was
29 due to the misconduct (as defined in Sections 1256-30 to
30 1256-43, inclusive, of Title 22 of the California Code of
31 Regulations) of that employee.

32 (iv) A termination of employment of a qualified
33 employee due to a substantial reduction in the trade or
34 business operations of the taxpayer.

35 (v) A termination of employment of a qualified
36 employee, if that employee is replaced by other qualified
37 employees so as to create a net increase in both the
38 number of employees and the hours of employment.

39 (B) Subparagraph (B) of paragraph (1) shall not apply
40 to any of the following:

1 (i) A failure to continue the seasonal employment of
2 a qualified employee who voluntarily fails to return to the
3 seasonal employment of the taxpayer.

4 (ii) A failure to continue the seasonal employment of
5 a qualified employee who, before the close of the period
6 referred to in subparagraph (B) of paragraph (1),
7 becomes disabled and unable to perform the services of
8 that seasonal employment, unless that disability is
9 removed before the close of that period and the taxpayer
10 fails to offer seasonal employment to that qualified
11 employee.

12 (iii) A failure to continue the seasonal employment of
13 a qualified employee, if it is determined that the failure
14 to continue the seasonal employment was due to the
15 misconduct (as defined in Sections 1256-30 to 1256-43,
16 inclusive, of Title 22 of the California Code of
17 Regulations) of that qualified employee.

18 (iv) A failure to continue seasonal employment of a
19 qualified employee due to a substantial reduction in the
20 regular seasonal trade or business operations of the
21 taxpayer.

22 (v) A failure to continue the seasonal employment of
23 a qualified employee, if that qualified employee is
24 replaced by other qualified employees so as to create a
25 net increase in both the number of seasonal employees
26 and the hours of seasonal employment.

27 (C) For purposes of paragraph (1), the employment
28 relationship between the taxpayer and a qualified
29 employee shall not be treated as terminated by either of
30 the following:

31 (i) By a transaction to which Section 381(a) of the
32 Internal Revenue Code applies, if the qualified employee
33 continues to be employed by the acquiring corporation.

34 (ii) By reason of a mere change in the form of
35 conducting the trade or business of the taxpayer, if the
36 qualified employee continues to be employed in that
37 trade or business and the taxpayer retains a substantial
38 interest in that trade or business.

39 (3) Any increase in tax under paragraph (1) shall not
40 be treated as tax imposed by this part for purposes of

1 determining the amount of any credit allowable under
2 this part.

3 (f) Rules similar to the rules provided in Section 46(e)
4 and (h) of the Internal Revenue Code shall apply to both
5 of the following:

6 (1) An organization to which Section 593 of the
7 Internal Revenue Code applies:

8 (2) A regulated investment company or a real estate
9 investment trust subject to taxation under this part.

10 (g) For purposes of this section, “enterprise zone”
11 means an area designated as an enterprise zone pursuant
12 to Chapter 12.8 (commencing with Section 7070) of
13 Division 7 of Title 1 of the Government Code.

14 (h) The credit allowable under this section shall be
15 reduced by the credit allowed under Sections 23623.5,
16 23625, and 23646 claimed for the same employee. The
17 credit shall also be reduced by the federal credit allowed
18 under Section 51 of the Internal Revenue Code.

19 In addition, any deduction otherwise allowed under
20 this part for the wages or salaries paid or incurred by the
21 taxpayer upon which the credit is based shall be reduced
22 by the amount of the credit, prior to any reduction
23 required by subdivision (i) or (j).

24 (i) In the case where the credit otherwise allowed
25 under this section exceeds the “tax” for the income year,
26 that portion of the credit that exceeds the “tax” may be
27 carried over and added to the credit, if any, in succeeding
28 income years, until the credit is exhausted. The credit
29 shall be applied first to the earliest income years possible.

30 (j) (1) The amount of the credit otherwise allowed
31 under this section and Section 23612.2, including any
32 credit carryover from prior years, that may reduce the
33 “tax” for the income year shall not exceed the amount of
34 tax which would be imposed on the taxpayer’s business
35 income attributable to the enterprise zone determined as
36 if that attributable income represented all of the income
37 of the taxpayer subject to tax under this part.

38 (2) Attributable income shall be that portion of the
39 taxpayer’s California source business income that is
40 apportioned to the enterprise zone. For that purpose, the



1 taxpayer's business attributable to sources in this state
2 first shall be determined in accordance with Chapter 17
3 (commencing with Section 25101). That business income
4 shall be further apportioned to the enterprise zone in
5 accordance with Article 2 (commencing with Section
6 25120) of Chapter 17, modified for purposes of this section
7 in accordance with paragraph (3).

8 (3) Business income shall be apportioned to the
9 enterprise zone by multiplying the total California
10 business income of the taxpayer by a fraction, the
11 numerator of which is the property factor plus the payroll
12 factor, and the denominator of which is two. For purposes
13 of this paragraph:

14 (A) The property factor is a fraction, the numerator of
15 which is the average value of the taxpayer's real and
16 tangible personal property owned or rented and used in
17 the enterprise zone during the taxable year, and the
18 denominator of which is the average value of all the
19 taxpayer's real and tangible personal property owned or
20 rented and used in this state during the taxable year.

21 (B) The payroll factor is a fraction, the numerator of
22 which is the total amount paid by the taxpayer in the
23 enterprise zone during the taxable year for
24 compensation, and the denominator of which is the total
25 compensation paid by the taxpayer in this state during the
26 taxable year.

27 (4) The portion of any credit remaining, if any, after
28 application of this subdivision, shall be carried over to
29 succeeding income years, as if it were an amount
30 exceeding the "tax" for the income year, as provided in
31 subdivision (i).

32 (k) The changes made to this section by the act adding
33 this subdivision shall apply to income years on or after
34 January 1, 1997.